

Lex Pacifica:

O R
GODS OVN LAW
O F

Determining Controversies

Explain'd and asserted, in

A SERMON

Preached at *Dorchester*, at the Assizes
holden there for the County of *Dorset*,
August 5. 1664.

By JOHN MARTIN, Rector of
Horsey's Melcombe.

James 3. 18.

— *The fruit of righteousness is sown in peace of them that make peace.*

L O N D O N,
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1861

1861

To the Honourable,
Sir Matthew Hale Knight, Lord Chief
Justice of His Majesty's Court of Exchequer; and
Sir John Archer Knight, one of His
Majesty's Justices of the Court of Common Pleas;
Judges for the Western Circuit: And

To the Right Worshipful,
Thomas Freke Esquire, High Sheriff of
the County of Dorset; together with the Right
Worshipful, His Majesty's Justices of the Peace
in that County.

My Lords and Honourable Gentlemen,



Is not any fond Conceit (bred and encouraged from your acceptance of this Discourse) that hath made me entitle the Respect of it to so Honourable and numerous a Partage. The publick Address of it (had I esteemed my self wholly free) must have directed it self (the duty of a Chaplain obliging me) onely to Master Sheriff; whose noble and prudent Deportment in the face of his Countrey, cannot but justifie as well as challenge a property of Homage from others, besides his known Dependents. But as by

Master Sheriffs command (the onely Person, I think, that could have set me that task) I became (at first) engaged to the Pulpit; so can I not think myself acquitted from that obligation, by preaching a maim'd Sermon to so Reverend and Judicious an Auditory.

a Sam. 4. 4.

We read of Mephibosheth, that When tidings came of Saul and Jonathan out of Jezreel, that his Nurse took him up, and making haste to flee, he fell, and became lame. The like misfortune (a truth which every one then observed not) happened unto this Discourse, by the haste I made upon strict commands to shorten your trouble, (though the tongues of Gainsayers may (sometimes) as hastily be fled from, as the swords of Philistines) this Discourse became lame; and I knew no better remedy for its halting, (at least no other satisfaction of Master Sheriffs last Injunction) than to present it to my Honourable and Learned Auditors upon its legs: which, if not so clean and becoming as Orators may expect, nor so firm and sinewed as Divines may require; yet may they be fit enough to go of an errand of Charity to my Christian Brethren, and to bring home your pardon for this (but) necessary piece of boldness in,

My Lords and Honourable Gentlemen,
Your meanest and humblest Servant,
JOHN MARTIN.

Lex Pacifica :

Or

Gods own Law of Determining Controversies explain'd and asserted.

Deut. 17. 12.

— And that man that will do presumptuously, and will not hearken unto the Priest (that standeth to minister there before the Lord thy God) or unto the Judges ; even that man shall dye, and thou shalt put away the evill from Israel.



That there might be (for this time) some alliance betwixt the Bench and the Pulpit, I have read for my Text this recapitulative branch of one of Moses Laws ; of that kind, Divines have commonly styl'd, the Judicial Laws : The Scripture by a Metonymy calls them Judgements, because they are such Laws as God himself appointed unto the Jews, to be dispensed out in Acts of legal Justice ; for Judgement is the Act of justice in particular cases, *per modum auctoris Juris, lib. 2. c. 29. Dubit. 1. n. 4. Idem Aquin. & Sor. & alii.* *causa precipientis & obligantis*, says a Lessius: as flowing from a cause, commanding and obliging to the exercise of such Acts.

Re-

Reduceable they are unto four *heads*. First, such as instructed the *Magistrates* in their duty towards the *People*. Secondly, such as taught the *People* their duty towards the *Magistrates*, and of one man towards another. A third sort inform'd them, how to demean themselves towards *Strangers*. And a fourth kind directed them in the *Domestick* duties of their *private Families*. The *Division* duly considered, shews the excellency of the *Jewish* *Policie*, in that the *body* of their *Laws* extended to all the *Eminent parts*, and *orders* of *Society*.

The *Obligation* of these *Laws* (as delivered by *Moses*) is by *Divines* usually affirm'd, not to reach unto us *Christians*: the reason is, because they are *Positive* *Laws*; and *Positive* *Laws*, though given by God himself, oblige only that *People* unto whom they are given; it being the sole prerogative of *Enate* *Law*, (that is, of the *Law of Nature*) to lay a *common Obligation* upon all *Mankind*.

De unit nupti-
u. 7.

But forasmuch as that same is an undoubted truth which *Tertullian* speaks in his book of *Single marriage*, [*qua ad justitiam spectant, non tantum reservata permanent, verum & ampliata*;] *Christians* are not only bound to equal, but to exceed, all others in matters of justice and honesty, (agreeable to our *Saviours* [*πληρώσαι*] in *Mat. 5. 17.*)

And being these *Laws* have ever been had in great *veneration* in the *Church of Christ*, wise and virtuous *Princes* having made them their *Patern* for *Laws*, as appears by the *Preamble* to our own King *Alfred's*

3 H. Spelman, *Saxon Laws*:

circa an. Chr.
887. in Concil.
Britan.

And forasmuch as *Divines* have recourse unto these *Laws*, in *debates*, and for *resolution* of many weighty points; as of *Marriage* within *prohibited degrees*, *payment* of *Tithes*, *Usury*, and some others; there be these

these three *Corollaries* that depend thereon.

First, that many of these *Judicial* Laws are *Conclusions*, evidently deduc'd from the *Law of Nature*; and are very apposit and suitable to *Ecclesiastical* and *Civil* Government, as well *now* amongst *Christians*, as *formerly* amongst the People of the *Jews*; and

Secondly, that for *that* reason, such of them as shall be by *Supreme* Authority judg'd fit, may be assum'd, either among the *Θείας καύρας*, (as *Antiochenus* styles d In prefat. ad Collect. Canon. them) the *Divine Canons* of the *Church*, or the *Decreta Comitiorum* (as we term them) the *Statute-laws* of *Civil* Government.

And *thirdly*, that such of them as shall be so *re-invested* with the force of Law, will be reducible to that kind of Laws, which some *Divines* have rightly styl'd *e* [*leges partim declarativa, & partim constitutiva*] e Suarez de leg. l. 3. c. 14. n. 4 laws partly *declarative*, and partly *constitutive*: *declarative*, in respect of the *matter* of them, as having been the *subject* of some *former* Law; and *constitutive* in regard of their *present* power to *oblige*, imprinted on them by the *Authority* and *will* of the Law-giver. The *Obligation* of which Laws, that it is in the *conscience* of the *Subject* (and by *consequence* a *sin* not to obey) no man without affronting *Nature* and *Religion* can deny.

And upon this *foundation*, I shall by Gods assistance *superstruct* a *disquisition* of these *three* Particulars, as the *heads* of my following discourse.

First, what the *tenour* and *purport* of this *Judicial* Law is, of which we treat.

Secondly, whether *this* Law may be *reviv'd* by *supreme* Authority. And

Thirdly, whether there be not either *formally* or *equivalently*, the like Law in this *Church* and *State* in which we live.

f Diog. Laert.
lib. 10.

In the *prosecution* of these, I shall crave leave to follow the Counsel of *Epicurus* in f *Laertius* [ἰδὲ πρὸς ἐπικουρὸν καλῶς,] not to present you with the *Flowers* of *Rhetorick*; to be more careful to *garnish* the *Dish*, than to *season* the *meat*; especially for such an *Auditory*, whose *parts* and *callings* must needs furnish them with abilities, to *concoct* far more *solid* matter and *learning* than can be expected from my *very Ordinary* skill and capacity.

First then, concerning the *tenour* and *purport* of this *Judicial* Law.

I.

And here if my *Obligation* to discourse of *this particular* Law, would permit me to speak of *Laws in general*, amongst many other things, that might be said, I should not omit to take notice of the opinion the *Heathens* themselves had of the *Sacredness*, and of the *Necessity* of *Laws*. Of the *Sacredness* of *Laws*, in that the *prime Heathen Lawgivers* endeavoured to perswade the people that *their* *Laws* were of *Divine extraction*; Amongst the *Greeks*, *Minos* feign'd to have receiv'd his *Laws* from *Jupiter*; *Lycurgus*, his from *Apollo*; and

g Strom. lib. 1.
p. 352.

Zaleuchus, his from *Minerva*; as g *Clemens Alexandrinus* tells us: and for the *Romans*, *Numa Pompilius* his fam'd addresses to the Goddess *Egeria* for instructions in making of *Laws*, are notorious to all; Foreseeing

h Curtius l. 8.

belike the importance of *that truth*, the h *Historian* acutely observes, as the reason why the *Persians* were wont to *deify* their *Kings*; *Majestatem imperii salutis*

i Euseb χρον. λογ. πρωτ. vid. Sca.
Animad. p. 19.

k Lib. 32.

i Phoroneus Moysē Antiquior 300.
an. Sic Euseb & Aug. docent; eum
tamen præcesserunt regna Assy. Ar-
gypt. Egypt. sed Regna legibus priora.
Liv. l. 3. Just. l. 1, & c.

esse tutelam; their opinion of the *Necessity* of *Laws* is infer'd from their conceit, that i *Phoraneus*, whom they fancied to be the *first* *Lawgiver*, was likewise the *first man*; καὶ ὁ πρῶτος ἀνθρώπων, & ἀρχέγονος, (as k *Nonnus* calls him) as if all that lived before him had not been men.

fo.

for want of Laws ; (what think you would they have thought of *them*, who will not live *like men* under just Laws ?)

But the *due* regard of *method* having confin'd me within narrower bounds, I shall in as few words as conveniently I may, endeavour fully to explain *this* Law, by insisting on these four particulars, or *integrant* parts of Law. 1. *Interdictum*. 2. *Censura*. 3. *Sanctio*. 4. *Ratio finalis legis*.

The $\left. \begin{array}{l} 1. \text{Interdict.} \\ 2. \text{Censure.} \end{array} \right\} \begin{array}{l} 3. \text{Sanction, and} \\ 4. \text{Final Reason of this Law.} \end{array}$

1. The *Interdict* of this Law is this, That if it hapned, either through the *ambiguity* of words, or *exception* of cases, that there arose any *doubt* of the *extent*, or *meaning* of any *Judicial*, or *Ceremonial* Law, in *inferiour* or *local* Courts of *Judicature*, the *Question* was to be brought before the great *Sanhedrin*, or Council of *Jerusalem* : and there a *definitive* Sentence being made, all both *Judges* and *Litigants* were *bound* under *pain of death*, not to *reject* and *contradict* the same; but it was to be put upon *Record*, as a *Rule* in such *cases* for the future.

To make this more plain, we will suppose a *Case* that may be easily conceived to arise, out of the Law of their *שולש עשרה*, or *second Tithing*, *Deut. 14. 22*. The words of the Law are these, [*Thou shalt truly tithe all the increase of thy seed, that thy field bringeth forth year by year.*] Upon *this* Law it might be doubted, whether by a *direct* consequence drawn from *this* Law, the *Jews* were not bound to pay unto the *Levites*, in their *first tithing*, the *tenths* of all such things as grew in their *Gardens*. The reasons of which doubt may be, First, for that *prudent* men might conceive, that the Law intended *no* more, but a *fit* maintenance for the *Priests* and *Levites* ; unto which such *small* things

would but little conduce; and therefore that they were not *included* in the Law for *Payment of Tithes*. And secondly, because by the *uncertainty* of their *estimation*, they might raise *contentions* betwixt the *Priests* and the *People*; or occasion unnecessary *scruples* in mens consciences, and thereby introduce that *posthumous* way of expiating *involuntary* Sacrilege by *Mortuaries*, as amongst us. And thirdly, because the word *קֶדֶשׁ* in the Law, which is rendred a *field*, is sometimes (though but *seldom*) found to signifie a *Garden*.

Now if the great *Sanhedrin* at *Jerusalem* should determine, that the *Jews* were bound to pay *Tithes* of those *minute* things which grew in their *Gardens*, the *People* were oblig'd by *virtue* of *this* Law in the *Text*, to submit their practise unto that *Decree*; and if upon *pretence* of *error* therein, some *חֲמִירָה* some contumacious Doctor (as the *Jews* call'd him) the same with the *Αταξίας διδάσκαλος*, in the *m Apostles Canons*, should factiously oppose the same, such a one was (by *this* Law) to be put to death.

This Council at *Jerusalem* was the same with that the *Text* styles [*the Priest*, or *the Judge*] for in the *ancient* state of that Government (as *n Philo* and *o Josephus* tell us) *ἐπίπαι πάντων καὶ δικασαὶ καὶ ἀποριστημάτων ἱερεὺς ἐτάχονταί*, the *Priests* had the *bearing* and *determining* of all *controversies*, in the ordinary way of *Judicature*; which course (as *p Eusebius* notes) was observed among them, (though not without some *mixture* of the *Laity*) till the reign of *Herod* the *Great*: in whose time the *Scepter* being about to depart from *Judah*, (the authority whereof had been till then pre-

served in this *Sanhedrin*, and the *Assamoni*; and *q Baroni* in his *Apparatus* shews you how) *Herod*, I say, upon

l *Grot. ad Loc.*
m *Can. 16.*

n *Lib. de Prin.*
confit.
o *Advers. Ap.*
lib. 2.

p *In Chron.* Ο αὐτὸς τὸς Ἰουδαίων
νομαστῆς καὶ κατὰ πατρίων ζήλωτας
ἀπέκρινεν, *idem Baron. ex Phil. l.*
2. de Temp. De hujus libri autoritate
vid. Baron. ad An. Ch. 1. p. 83. n. 20.
Plant. & ad An. Chr. 32. p. 143.

q *p. 10. n. 19.*

upon reasons of State flew them all but one, and substituted a Council of Profelytes in their stead.

Let no man think that the Tribe of Levi, either took too much upon them, or had too much conferr'd upon them, by this honour of Judicature; it was no more than the Heathen-world bestowed upon their ignorant and Idolatrous Priests; for the Ethiopians, ^r Strabo; ^r Lib. 17. for the Egyptians, ^s Elian; for the Persians, ^t Eusebius; ^s L. b. 14. for the Athenians, ^u Josephus; for the Gauls and Britains, ^x Caesar; for the Romans, ^y Cicero, are authentick witnesses. ^t In chron. ^u Lib. 14. Ant. ^x Lib. 6. ^y L. b. 2 d. legib.

Nor was the Impostor Mahomet wanting to the reputation and advantages of his Religion by the like design: whose Priests always sit with the secular Magistrates; their Alcoran or Scripture (after the manner of the ancient Councils) lying before them; as if all were done by an infallible rule, and the judgment were Gods.

But it almost exceeds belief, in what veneration and power that Order of men was in this Land, for some hundreds of years after this Nation had received the Faith; and that not by any precarious favour of Princes, or by an ignorant fondness of the People; but established their honour was by Law; by which every Priest was accounted *Thanirectitudine dignus*, as appears by the ^a Laws of King Ethelstan; (a respect, which I shall neither arrogantly, nor unseasonably communicate unto vulgar ears.) The reason whereof is not only that which our learned Antiquarie gives us in his English Councils [*Quippe sub his seculis apud ipsos solum esset literarum clavis, &c.*] because the learning of that age was wholly ingross'd by some of the Clergy; the Priest being the Oracle of the People, as the Bishops were of the King and Kingdom: but there is another, and (perhaps) a stronger reason to be collected

^a in ult. de verigildis, i. e. capitulum estimationibus. Vid. S. H. Spelman in epist. ad Reg. Jac. ib.

b Si quis arrogans pro Episcopi iustitia emendare noluerit, Episcopus Regi notum faciat. Rex autem constringat malifac-torem, ut emendat, cui foris fecerit, scilicet primum Episcopo, deinde sibi, & sic erunt ibi duo gladii, & gladius gladium iuvabit. Hoveden. Annal. par. post. Hen. 2. p. 60. n. 50. Edit. Savil.

collected out of *those* words, in one of King *b* Edwards Laws [*& gladius gladium iuvabit*] from the *reciprocate* assistance of the *temporal* and *spiritual* swords: *Christians* then believing, that there was as much *credit* to be given unto *those*, as to any other words of

our Saviour, Mat. 18. 18. [*Whatsoever ye shall bind on earth shall be bound in Heaven, and whatsoever ye shall loose on Earth shall be loosed in Heaven.*] But this honour and power, together with the *immunities* of the Church, *sub Normannicis Regibus nutare capit*, says that *c* Author; and in the Council of Clarendon under Henry the second, they received a grievous wound: which hath more or less continued *bleeding* ever since: and tis to be fear'd would have done so, till the *spirits* of all Ecclesiastical Jurisdiction had been clean exhausted, if Experience (which is sometimes the *Mistress* of wise men, as well as of fools) had not bound up the wound with a *probatum est, No Bishop, No King*.

c Sir H. S. ib.

I speak not *this*, as if I thought it either convenient, or necessary, that the Clergy should concern themselves in matters of civil Judicature: (Pity it were that so active and learned a Gentry as this Nation is wont to produce, should betwixt doing nothing, and doing ill (which would be the certain consequent of that other design) degenerate from the worth and lustre of their Ancestors!) that *αὐτεξουσίαν* or power of self-Government, which the Primitive Church did exercise (and for which, some men of late did so much struggle and contend,) though it cannot be denied to be lawful, yet was it cumbersome, and in many cases unneffctual.

It could not stand with the Reputation of the Church of Christ to make appeals unto the Heathen Emperors,

Of determining Controversies.

9

as the *Council* of *Antioch* was fain to do, under the affronts they received from *Samosatenus* the Heretick after they had *deprived* him. Nor have the *Popes* themselves been wholly exempt from the like *exigents*, as appears by one instance for all, by the *supplicatory* Epistle of *Pope e Boniface* to the Emperor *Honorius*; in the case of *Schism*, between the *Popes* themselves. So *unuseful*, if not *unsafe*, will be *St. Peters* Keys, (though hanging at the *Pope's* own *girdle*) if they should lock up *Caesar's* sword.

d Bill. [ex F. h
Feb.] Synod An-
tioch. in Pr. & n.

e Voel. tom. 1.
p. 213 & Bar.
ad An. Chr. 419.

The *sober* and *learned* Clergy of *this* Church must needs know, that the *Spiritual Jurisdiction* stands in need of the *temporal power*: and that the *Miter* is only safe, under the *shadow* of the *Crown*. Happy then it is for us, that *Ecclesiastical Dominion* can derive it self into the *same fountain* from whence *descends* the *temporal authority*: and that (like *f Righteousness* and *Peace*) the *two Jurisdictions*, can *kiss* each other in the *Arms* of *Sovereignty*: that among us, 'tis all one to be our *King*, and to be the *Defender of the Faith*: that the *Sword* is joyn'd to the *Word*, and the *Judge* to the *Priest*.

pp. 85. 10.

This *Constellation* of Power, as it is a *Prognostick* of *security* and *happiness*, to men of *temperate* spirits; so will it prove a terrible *Omen*, to such as *despise* *Dominion*, and leave their *heady practises* to the *Censure* of *just* Laws, which are the true *Standard* whereby to *measure* the crimes of *Offenders*; and not the *Opinions* of *Ignorant* and *prejudicate* men; which leads me to the second *integrant* part of this Law, *Censura Legis*.

2. Such hath been the *policy* of *Satan*, that taking advantage of the *ignorance*, *prejudice*, *interest*, and *vices* of men, he hath sent some sins up and down the world like *spies*, with *false* names, that might not cause men to *distrust* and *avoyd* them; they were not only *carnal* but

g Clem. Alexand
 λογ. προ-
 τρεπ. p. 29.

but *spiritual wickednesses*, which have *wandered* about in this *disguise*, *compassing* the world like *him* whose *emissaries* they are: not only *prava*, but *Pia fraudes* have on all hands *cheated* men of their *pretious* souls; *stellicidia mellis de Labacunculo venenato*, as *Tertullian* speaks, the *Devil* having *poysoned* the *Limbecks* from whence men hoped to have *suckt* most *sovereign Elixars*: and dealt with the world as *Praxiteles* the Statuary in g *Posidippus* did with the foolish Heathen, made his own *Darlings* to be worshipt by mens *fancies*, instead of a *Deity*.

But as the judgement of God is according to truth in *punishing* sinners; so are the sins of men *exactly* recorded by *Him* in his *Doomsday-book*, at the approach of those *everlasting burnings*. *Drunkennes* will not then be called good fellowship; nor *uncleannefs* a trick of youth; nor *cheating* a trick of wit; nor *pride*, decency; nor *oppression*, self-preservation; nor *Rebellion*, honesty; nor *faction*, Godliness; nor *Sedition*, standing for the truth; nor *superstition*, devotion; nor *Sacrilege*, reformation.

How light soever it may seem to some in these days to *reject* the just commands of our *Lawful Superiours* in *Church* and *State*, yet *ab initio non fuit sic*: and how it came to pass, that *that* which was so *grievous* a crime among the *Jews* (Gods own people too) should be *transform'd* into an *heroick* Virtue among *Christians*, will want some *Oedipus* to unty the knot.

The Scripture it self bears witness of the hainousness of this Sin, allotting it a place among sins of the *first magnitude*, sins of *presumption*: [*Qui autem superbierit nolens obedire*] So the *vulgar* reads the Text, and before that the *Septuagint* (after the **original*) [*ὁ ἐὰν ποιῇσιν ἐν ὑπερηφανείᾳ*] and therefore *h Aquinas* doth rightly define contempt to be [*nolle subisci legi*] not

to

כודין

h12.7. 86.9.3.

to submit ones self to just Law, and so *i peccare ex con-* i Suar de legib. c. 28. n. 13.
temptu, est peccare ex voluntate non se subjiciendi alteri,
 to be guilty of the sin of contempt is wilfully to refuse
 to submit our selves to them that have a just and lawful
 authority over us.

This sin is first brooded and hatcht in the understand-
 ing; when that person, or his authority to whom we
 ought to submit, is less esteem'd than he, or that ought
 to be: next it descends into the inward affections and
 passions of the mind; and there grows and strengthens
 it self, from a desire and contrivance of opportunities to
 express it, and to invite others to the same attempts:
 and lastly, it comes out, and shews it self to be a fiery
 flying Serpent, ready fledg'd and prepared for action;
 and discovers as much by Overt acts, as the Law calls
 them; whereby this pride and malice of the heart be-
 comes discernible to all.

A Sin it is, that of all others, carries with it the great-
 est provocation both with God and Man; 'tis not (al-
 ways) so much the thing that is done; as the mind
 k wherewith it is done, that gives unto this sin its true k Tunc non pec-
 estimate and size. When God made Saul King, there cati species, sed
 were some that brought him no presents, 1 Sam. 10. the peccantis in sen-
 Exchequer 'tis like complain'd not for want of them; tio pensat.
 yet the Holy Ghost calls thole men, sons of Belial; as D. Bern. l. 1. de
 having an eye upon the venome that lay in their hearts; præcept. &
 they did it not, because they despised him. We read disp. c. 14.
 of one that not long after the commandement for ob- v. 27.
 serving the Sabbath was given, had gathered sticks upon
 that day; and was therefore, by Gods especial appoint-
 ment, ston'd to death, Num. 15. the fact was but small,
 but his pride was great; he did it ~~in contemptu~~ too, out
 of presumption, and so fell under their ~~לדני נפשות~~ their l Caninius dis-
judicium animarum (as the Jews call'd it) for he that de- quis. c. 7.
 spisd Moses Law was to die without Mercy, as the Apo-

file tells us, *Heb. 10. 28.* and tis the *Sanction* of this Law [*even that man shall die*] which is our *third* particular.

m Dr. Sander-
son prælect. 6.

3. *Laws* have generally in them a double power ; *directive* and *coercive* : the *first* describes and appoints the *duty*, the *second* determines the *punishment* to be suffered, if the *duty* be not perform'd. Upon this follows a *double* obligation of the *Subject* by Law: the *first* is ὑπακοή, *Obedience* ; the *second* is ὑποταχή, *Subjection* : the *former* we commonly style *active*, the *later*, *passive* obedience : *active* obedience is doing the *duty* ; *passive* obedience is submitting to the *punishment*, if we do it not.

The *first Positive* Law that ever was made in the world had these *two*, the *directive* and *coercive* parts. *Gen. 2. 17.* [*Of the tree of the knowledge of good and evil thou shalt not eat*] there's the *directive* part : [*for in the day that thou eatest thereof, thou shalt die the death*] there's the *coercive* part.

These *two* parts of Law, have respect to that *two-fold Power*, which is in every mans soul ; the *Understanding*, and the *Will* : the *Understanding* is the *Card* and *Compass*, the *Will* holds the *Rudder*, and steers the course of mens *actions* : *that* directs, *this* executes. Now because the *Will* is a *free power*, and may choose to do or not doe ; therefore the *coercive* part of Law is added, to restrain the *Will* from evil, in doing contrary to the *rule* of Law ; for if the *Will* had no *freedom* in her actions, all the *Laws* of *God* and *men*, were (at best) *impertinent*. *μετὰ αὐτὴν αἱ ἐντολαὶ, καὶ μάλιστα ὁ Παῦλος, &c.* as *Origen* truly speaks, and with him *two great Fathers* of the Church in his *Philocalia* : and *St. Cyril* of *Alexandria*, of as good authority as any, says as much in his sixth Book *de Adoratione in Spiritu & veritate*.

n ch. 21.

If this were not true, with *Reverence* to your Lordships

ships be it spoken, you would return from your *Circuit* with *sins* upon your *consciences*, of the same colour with your *Robes*; I mean sins of bloud, *Scarlet* sins, as the *Prophet* calls them: it being utterly *unreasonable*, ^{o Isa. 1. 13.} and therefore *unlawful*, to punish any man for doing that which he had *no power* to avoyd. A consequence so inevitable; that some *Phanatiques* in the close of the late troubles, foreseeing the force of it, refused to assit in their *Councils of War*, because they would not concur in that mans punishment, whose *actions* (as they conceived) were no more *contingent* and *free*, than the motion of a stone, tending to the centre of gravity. The effect of which *pernicious* error, was most acutely foreseen by a great *States-man* of ours, for almost an age since; as the late *Reverend* and *learned* *p Author* of ^{p Part. 1. c. 6. f. 12.} the *Quinque-Articular History* will inform you.

This *coercive* part of Law belongs to *vindicative* justice, and appoints the *punishment* due to the breach of each particular Law; which is not *always* to take its measure from the fact *materially* considered, but in *conjunction* with the *will*, and other *faculties* of the soul. *Intentio est qua dat precipuam formalitatem in actibus moralibus*, (say the *q Schoolmen*;) the *intention* gives the ^{q Aquin. 12 a. q 72 1. 8. c. 34. q. 88. 4: 1m.} *formality* to the sin; and so creates that difference the ^{r c. quia a. Dist 10.} *r Gloss* observes, betwixt *non parere* and *contemnere*; of great importance with *Casuists*, in stating the nature and kinds of offences against Law, *in foro interiori*, or in the *conscience*: for *in foro exteriori*, or the publick tribunal, there the Law judges of the *intention* by the fact, and not of the fact by the *intention*.

The *formality* of the sin we speak of, stands in the [*nolle obedire*] in the *Text*; enough to exact the greatest punishment, especially from such a Lawgiver, who hath *absolute* Sovereignty over mens lives. *Ego occidam, & ego vivere faciam*, says God, *Deut. 32. 39.* I

* V. Soto. de
iust. & iur. l. 4.
q. 2. a. 3.

kill, and I make alive; that is, say * *Expositors*, I have the sole original right and authority of taking away mans life; and therefore *Magistrates* cannot take away the lives of *Malefactors*; or expose the lives of their Subjects to the hazard of just wars; as having *absolute Dominion* over mens lives; but as *conservators* of the Peace, and *publick* good. And upon this ground it is, that it is *injustice* in them, to make Laws, that have *punishments* annext unto them *disproportionate* to the offence committed, especially in the *excess*; and from

f Quoties pœnam mortis imponebat
transgressoribus alienius legis, ma-
teriam illius legis fuisse gravem, &
de se sufficientem ad peccatum
mortale, significat. Scot. in 4. d. 1.
q. 6. Sic Aug. l. 2. de Bapt. c. 6.

hence it is, that we account it but *rea-sonable*, to conjecture what is the *quality* of the crime, by the *nature* of the punishment inflicted upon offenders; the crime here is *contempt*, the punishment's death: *gravis pœna, sed ad vitan-*

ad locum.

dum periculum omnium gravissimum, saith the learned and experienced *Grotius*, a great punishment; but tis inflicted for prevention of the *greatest* mischief in the world: you will believe him, if you please to reflect upon the *fourth* and last *integrant* part of this Law; the *Ratio finalis legis*; the end why God made this Law, and secured it from the *approches* of the foot of pride, by so *severe* a punishment; and that was, for prevention of *Schism*; exprest here *Antonomasticus*, [the evil;] and thou shalt put away the evil from Israel.

4. *Schism* in the proper notion of it seems to me to be

u Serm. 21. de verb. Domini.

x Lib. cont. Gent. ἐναντίας ἡ
μαχομένη ἀλλήλαις ἔχουσαι
τὰς θεουκίας ἐν πάλαις, &c.

a thing not known to the *Heathen* world. u *S. Augustine* (indeed) and x *S. Athanasius* tells us of many *bloody quarrels* that hapned amongst them concerning their *Idolatrous* worship, but me-

thinks there should be no *Schism*, (at least not *properly* any) where there is neither *truth* nor *Church*. But with *Sedition*, the younger Sister of *Schism*, (for *Schism* seems

seems to be as old as that bloody quarrel betwixt Cain and Abel) the Heathen were so well acquainted, that *Thucydides* gives this true Character of the Monster, *πῶσα ἰδέα κακοτροπίας ἐν γένει κατέσχευε*, that she it is that hath brought forth mischiefs of all shapes and sizes in the World. And Schism cannot but be thought so much the more Superiour to Sedition, in the production of mischiefs; by how much the more fierce all quarrels and contentions are, that spring out of different opinions in Religion: and further, dissentions of this kind have, above all others, the strongest appetite of propagation. Agresours in factions of religion, labouring to have their names and opinions serve to that same end as *Zisca*, when he died, appointed for his skin; who being Leader of the *Taborites* (a faction in *Bohemia*) commanded that a Drum should be made therewith, (as *Dubravins* and others tell us) that something of *Zisca* might still be heard to sound, in the Ears of his followers, and their enemies.

I shall not burthen your patience by prosecuting the common place of Schism, with infinite authorities out of the Fathers, setting forth the grievousness of this sin: it was the due consideration hereof, that made *A-222 q 39. 2.* *quinas* to affirm Schism to be the greatest of all sins^{3m} against our Neighbour; and that not only *respectu circumstantiarum*, in respect of the many circumstances and accidents that attend it; but likewise *respectu speciei*, in regard of its own nature; because it is the most contrary to Charity, and the love of our Neighbour; for it is *contra spirituale bonum multitudinis*, as he speaks; it is against the spiritual good of a multitude: so that we may say of Schism, as the * Women of Israel sang of * *I SAM. 18. 7.* *David*; if other sins (like *Saul*) kill by thousands; Schism (like *David*) kills by ten thousands at a time. The Apostle in his Epistles calls it *Heresy*; and if *noscitur ex sociis* be a good Topick, you may judge what

b D *Præscrip.*
adv. *Heret.* l. 1
c. 6.

c Bell. lib. 2. de
Ro. *Post.* c. 12

δὸ τῆς νέας ὁρίσκατος Ρώ-
μης τῷ τῆς παλαιότερας ὁμό-
τιμος, διὰ τὴν ἑξ' σκῆπτρον
μετάσσειν. Alex. Arist. in
Synops. Can. 28.

what kind of sin it is, by the company amongst which you will find it, *Gal.* 5. 19. *b* *Tertullian* says, that word comes from a *Greek Verb* signifying [to choose] so that he makes *Schismatics* and *Heretics* to be such as will choose for themselves. The true definition is, *tis a voluntary departure from the government of our lawful Superiours, and a refusal to communicate with our fellow-members, with a design of drawing followers after us.* This is that *poysoned Arrow* which the *Romanists* would fain dart into the sides of the *Church of England*, and therefore make the *formal reason* of *Schism* to consist in a *voluntary departure from the Pope*, as being Christs *Vicar* here on earth: but *non haeret lateri lethalis arundo*; we are yet to be convinc'd that the *Pope* is Christs *Vicar* here on Earth, though we will not deny him to be *St. Peters* successour in *Rome*. And as for our *voluntary departure from a dependency on that Church*, we have done no more, but asserted that just right we had to govern (and by consequence to reform) our selves, by the 28. *Canon* of the fourth *General Council*: wherein ἴσα πρεσβεία, equal privileges with *Rome*, were granted unto *Constantinople*, διὰ τ'

σκῆπτρον μετέσσειν, (for so *d* *Alexius Aristinus* truly abbreviates that canon) because the seat of the *Empire* was transferr'd from *Rome* to *Constantinople*: how much rather do the like equal privileges belong to us, who have not only translated the seat, but the *Empire* too, (I mean of our selves) from that *City*, of whose vast *Dominion* this *Island* was sometimes a part: But I return.

This is that sin which God designed this Law to prevent, as a most intolerable evil: for without a power to determine Controversies, that should arise amongst

a seeking and scrupulous party, it is not in the power of man to do it. And being therefore that it is Gods manner, *e res humanas conservare modis humana nature congruentibus*, to conserve the affairs of men, by ways & means agreeable to mans nature; and being that others besides the State and Church of the Jews, are liable to the like distempers and confusions; we may reasonably conceive it, not unfit to be examined, whether this Law may not be revived by Supreme Authority; which is my second Disquisition.

2. The Respect of the directive part of this Law, is all that we inquire after; for, as for the coercive part thereof, we re-inforce it not; *hoc nunc agit in Ecclesia Excommunicatio, quod agebat tunc interfectio*: Excommunication among Christians (saith f S. Augustine) in many cases commutes for temporal death under the Law; and let this be one of them.

But for the directive part of this Law, why it may be revived by Supreme Authority, there be these Reasons producible, and fit to be soberly weigh'd by all that have a true Christian temper of mind in them.

1. First, because the same thing was put in practise by the Apostles themselves, for prevention of the same evil, *Acts. 15.* for certain men which come down to Antioch from Judaea, having taught the Brethren and said, except ye be circumcised after the manner of Moses ye cannot be sav'd; the Apostles and Elders came together for to consider of this matter, v. 6. And having made a Decree concerning the point in controversy; how religiously it was observed, not only by Christians of that Age, but for more then 300 years after, g Tertullian in his Apology, h Origen against Celsus, i Eusebius, k Cyril of Jerusalem, l St. Austin,

g In Apolog. c. 9.
h Contr. Cels. lib. 8.
i Eccle. Hist. l. 5. c. 1.
k Catech. 4.
l Epist. 154. ad Pullic.

and

m Ep. 79. ad
N. C.

and m Leo will inform such as please to enquire.

2. Secondly, because the following Councils did never doubt of the like power in themselves, as oft as they came together, for determining questions of faith, or practise. I shall only instance in the 6. n Canon of the third General Council; which pronounceth an *Anathema*

o In Synop. Can. conc. Ephes. c. 4.
p μεγάλη διαφορά τῷ ἱνα τι-
ῆς, καὶ τῷ ἀμφιβάλλειν τινα
οὐκ ἔστιν τίνος πρῶτος, ib.
εἰμ.

on whomsoever should διωδήποτε τρόπον
παρεσταλέειν (which o *Aristinus* reads by
ὁ ἀντοφθαλμῶν τῇ σκωδῶ. and p *Balsamon*
expounds by ἀμφιβάλλειν) should but he-
sitate or doubt of, as well as oppose the
Decrees of that Council.

p Vide Cyril.
Alex. ὁμῆς.
πρὸς τινὰς ἐκ
τῶν ἐν Κων-
σταντ. κληρ.

Now the Council of *Ephesus* we all know, met for determining a dispute about the person of *Christ* : for p *Nestorius* had affirm'd and taught, that the blessed *Virgin* was not the *Mother* of *God*, but of *Christ* : from whence a duality of persons must needs be infer'd to be in the *Son of God* ; and by consequence, that there was not a *Trinity*, but a *Quaternity* of Persons in the *Divine nature*. The Council did (as they needs must) determine against *Nestorius* ; which determination though undoubtedly true, yet because it was a consequence drawn from Scripture, by the mediation of humane understanding, and the Council did so severely oblige all the Church to receive it, it must follow, that the Council had a full assurance of her power to define matters in controversy ; and to oblige the members of the *Catholick Church* not to reject her determinations, under the pain of *Anathema*. The argument is of such weight in the judgment of the great q *Cardinal*, that he sticks not to conclude an *Infallibility* of the Church from thence. I stretch it no further than to infer à majori ad minus, that, if there were a power in the Church, that under so grievous a punishment, could exact the reception of her Decrees in points of Faith ; much more

q Bel de Conc.
lib. 2. c. 4.

may

may the same Authority require obedience to her determinations in smaller (because *practical*) things.

3. A third reason is; because it is *absolutely* necessary, that all *publick Societies*, whether *Ecclesiastical* or *Civil*, be furnished with all *necessary* means to preserve themselves from those evils, which are *apparently* destructive of all governments : which evils are such as doe *inevitably* produce *discord, divisions* and *separations* amongst the *members* of the same community ; the only *Remedy* whereof, is an *Authority* and *Power* in the Governours, to *hear* and to *determine* all Controversies, and to bind the *contending* parties to *acquiesce* in their determinations.

Not as if I thought, that a man were bound to believe every thing to be *true*, or *best*, that should be so determined : for this great Council of the *Jews* were not *infallible*, nor needed so to be ; as appears by that *Offering* which God appointed to be offered, when the *Congregation* had trespass'd through *ignorance*, Lev. 4. 13. But, that the members of *Church* or *State* may be bound *non contra agere* ; not to do that which is contrary to a *definitive sentence*.

It is sufficient that *in materia probabili* (the common subject of *humane* Laws) there be a *moral certainty* in our *Superiors*, of the *truth* or *goodness* of what is thus *defin'd* : which is enough to oblige *Inferiors* to obedience ; the *Casuits* rule holding good in this point [*si res sit dubia, praesumendum est pro Legislatore* ;] reason, modesty and humility, nothing *dubie* (and that must be *demonstratively*) appearing to the contrary, will (at least) *admonish* us, to think the judgement of the *Law-giver* the *best* and *truest*.

4. A fourth Argument is; because it is a thing *unreasonable* to *affirm* or *imply*, that Government under the Gospel should be left in a *worse*, and *inferior* con-

2^d 2 Cor. 3.8.

dition to the state of it under the *Law*; & *St. Paul* having advanc'd the *ministration* of the *Spirit*, above that of the *letter*; that is, the *Oeconomie* of things under the *Gospel*, above that they had under the *Law*; of which things *Government* cannot be understood to be so *inconsiderable* a part, as to be excluded from having any *share* in that *Evangelical Prelation*; which yet must *inevitably* follow; if the same *diseases* remaining in the *body politick*, the *Governours* thereof should be debarr'd the use of the like *Remedies*: I mean, if *Christians* shall be (at least) as liable to *faction* and *Schism*, as any *Jews* whatever; and yet the *highest* authority amongst them, be not allowed *sufficient* means to *prevent*, and *restrain* men from *Innovations*.

Add hereto, how *ridiculous* a thing it must needs appear to be, that men *concern'd* in *Government*, should frequently *meet*, and *consult* about making of *Laws*, for such as had arm'd themselves against all *force* of *Authority* with *this* Principle, *viz.* that they were *bound* to receive no *Laws*, further than should stand with their *own* good liking and approbation. By which means it must come to pass, that it would be the task of the *Magistrate*, not so much to contrive *Laws* that might promote *Truth*, *Peace*, *Justice* and *Virtue* amongst men, as so to model *his* *Laws*, as mought best secure, both *himself* and *them* from contempt.

Ob. It may (perhaps) be objected, that there is a wide difference betwixt what *God imposeth*, and what men *injoyn*.

Sol. To this I answer first, That it is to be observed, that *God* doth in *this* *Law* bind the *Jews* to follow, not what *he himself*, but what their *lawful Superiors* (the *Priest* or *Judge*) should *define*; to whom likewise he had not promised any *infallible* assistance, but

but on the contrary, had left them to the best use of their reason, which at best may erre: and when actually it did erre, yet were the *Jews* bound to follow, and not to dispute, the (but) *erroneous determinations* of that Council that sat in *Moses Chair*.

And secondly, That the Law of God doth not exceed the just Law of the Church or State, in respect of the obligation, though it doth so in respect of its stability; the reason is, because the *obligative force* of Law, is from the *essence* or *nature* of Law, and is the *necessary effect* of Law. The *Law-giver* doth not give to Law its *essence*, but its *existence*; he may choose to make this or that *particular Law*, but when he hath made a Law, that Law hath its force from its own *specific* nature; for, that Law should bind, is *quid aeternum & immutabile*, it is an *eternal* and *immutable*, because it is an *essential property* of Law.

5. Lastly, The revival of this Law is not opposite to Scripture, nor is the Scripture an adequate rule for all such things as are to be done by us in our several places and callings; from whence it must needs follow; that the multitude must stand in need of *direction* and *determination*, either from themselves, or from others, in many particular cases.

Let no man think much that I have said, that the Scripture is no adequate rule for particular actions; for if this were not true, it must follow (as the late *Reverend* and *Learned Bishop* of *Lincoln* observes) that such as never had the *Scriptures*, never had any rule for particular actions; which is not onely contrary to experience, but to that of the *Apostle*, *Rom. 2. 15.* where he tells you, that the *Heathens* who had not that Law which God gave unto the *Jews*, did govern themselves in particular moral actions, by that Law which was written in their hearts.

*s Dr. Sanderson
Præf. 4. Sect.
14.*

A *principal* but not an *adequate* rule of moral actions, we must acknowledge the *Scripture* to be; and therefore, as the *Law of nature* (by reason of its *generality*) doth stand in need of a *supply*, which it hath from the *determination* thereof, by *particular humane Laws*; so the *Scripture*, by reason of its *generality* (though not for *that* reason onely) doth stand in need of a *supply*, from *particular* rules of *particular* actions.

For in *moral* actions these *two* things are to be considered; *First*, The *principal* rule by which they are to be *governed*; together with the *principal end* unto which they are to be *directed*; and so the *Scripture* is a rule of all our *moral* actions, *directing* us to do all that we do in *Charity*, for *edification* of our Brethren, and for the *Glory* of God. The *second* thing, is that *immediate* and *adequate* rule, whereby the *action* we are about to do, is to be *govern'd*; and *this* (as it is not *necessary* that it should, so) the *Scripture* doth not *prescribe*; but, as in things left unto our *own* choice, we *govern* our selves by *that* rule we esteem *best*, or *good*: so, as we are members of the *Church* or *State*, Reason cannot but tell us, that in *particular* actions, our *understanding* as well as our *will*, may stand in *subordination* to *such* as have a *right* and *authority* to *govern* us.

Dissenters will easily be convinc'd by an instance in both. These *Reverend* and *Honorable Persons* (my *Lords* the *Judges*) have for performance of their duty, *this* rule of doing it from *Scripture*, *Dent. 1. 16.* [*Hear the causes between your Brethren, and judge righteously between every man and his Brother*] *this* is the *Principal* rule of that action their Lordships are now upon; but the *form*, *manner*, *time*, *place*, yea the *very* rule of judging *righteously between every man and his brother*, is not *prescrib'd* in *Scripture*, but by the *Laws* of this
Land,

Land, unto which their Lordships hold themselves bound to conform, as the adequate and immediate rule of their consciences, in administering justice in this Nation.

The like instance I shall crave leave to give in a matter of exceeding great concernment to us, as we are members of this Church, and owe obedience unto his Majesties Ecclesiastical Laws. It is the command of our dear Saviour, our Lord and Master Jesus Christ, that the Sacrament of the Lords Supper be received often, in remembrance of his most pretious death and passion, and for the actual application of the benefits thereof unto the worthy Receiver; and that this be done with such reverence and preparation, as becomes so holy and dreadful a mystery; but the gesture, time, place, manner, and other circumstances, are not prescribed by Scripture, but left in the power of the Church to determine (who hath the standart and rule of decency in her hands) *nisi fortè tantum Sacramentum minùs deceat ordo, quàm confusio*; unless that Sacrament be the onely thing that is best set out by disorder and confusion, as *t* Bellarmine smartly (if justly) replies upon the Censurators; and the Apostle himself hath confuted with *1. 4. 8.* Judgements from Heaven, *1 Cor. 11. 30.*

Ob. But here it will be objected, That if this be granted, Christian liberty would be no more but an empty name; and thousands of good Christians must hold themselves bound to submit unto such Laws, as are not agreeable to their particular consciences, which were to lose the fairest Jewel in the Crown of Reformation.

Sol. To this I say, God forbid but that every good Christian should have a due regard unto such things, as lye in common unto the whole profession, as Liberty and Conscience do; but we must remember, that *non plus homini, quàm veritati tribuendum*, that we do not sacrifice truths to titles, and things to names.

Liberty

Liberty is a word that the whole world (in a manner) first learnt from *Luther*, as that which *dropt* from *Heaven* into his *arms*; though many of his *words* and *actions* (applauded and imitated both *then* and *since*) could not be *warranted* by his *very large* Commission. I mean it not so much of his burning the *Corpus Juris Canonici* in the *publique Market-place*, in token that he had set *all* the world *free* from *Laws* (which he did thereby as *truly*, as *Xerxes* bound the *Hellespont*, when he cast a chain therein), but rather of his *contemning* and *reviling* the *Civil Magistracy*, on whom in his book *de potestate seculari*, he bestows this *Character*, *sunt communiter maximè fatui, & pessimi Nebulones super terram*; which amongst other worse (if there could be worse) expressions, rendred him *obnoxious* amongst his *enemies*, to that sharp *invective* in the *Diet at Worms* [*Exlex homo, leges ipsas omnes damnat, &c.*] and made his friend *uGesner* doubt what would become of that *prodigious liberty*; *faxit Deus*, says he, *ne contentione & impudentiâ oris, obsit Ecclesia sua*. *Yocks* of unjust servitude may sometimes be *broken*, but *Christians* must not fling the *Pieces* of them in the *face* of *supreme authority*.

u Con. Gesn. in
universal.
biblioth.

But as for *Christian liberty*, I shall say in one word, that it is best known by its *contrary*, and that is, by that *Spirit of bondage* which was in the *unconverted Jews*; so that *Christian liberty* is no more but a *freedom* from the *burden* of the *Ceremonial*, and the *curse* and *rigor* of the *Moral Law*; from the *guilt* and from the *Law of Sin*; from the *fear*, and from the *power* of *Death*. This I take to be all that can be found in the *Scripture*, which is the *Christians Magna Charta*, the great *conservatress* of his *Liberty*. *Laws* therefore that preserve *Order* and *Decency*, and keep men from falling into sin (the onely *vassallage* of a *Christian*) can by

by no means *infringe*, but rather *advance Christian Liberty*.

As to the later part of the *Objection* that concerns *private conscience*, supposed in some to be oppressed by such Laws, to which others may as innocently as willingly submit, I answer, that it may justly cause all sober men to suspect, that there is some error and *fascination* in that opinion; *Conscience* of late, having justified the *Jews* miraculous Fable of their *Manna*, namely, that it had the *taste* of that which every one best lik'd; *flesh* to one, *fish* to another, and *fruit* to a third.

Certainly men ought to be very *jealous* over the importunities of their *Consciences* against *publike Laws*, when they shall reflect upon the *miserable delusions* of those *Miscreants* amongst us, who having *besmear'd* themselves with the blood of their King, should dare *publikely* to *justifie* (in the very face of *Death* and *Judgement*) so *grievous* a Crime, from the dictates of their *private Conscience*, and *their following of God*, as they term'd it. Which last *blasphemous* expression will not suffer me to leave you unacquainted with that *remarkable Caution* for all in Authority, which fell many years since, from the *Divine Pen* of that incomparable *x Hooker*, *Impossible* (saith he) it is, that ever *x In prefat. Sect. 8.* the wit of man should imagine, what will grow out of such errors, as go mask'd under the Cloak of *divine Authority*, till time have brought forth the fruits of them: for which cause it becometh *Wisdom* to fear the sequels thereof, even beyond all apparent cause of fear.

But to speak something that may comport with the remainder of my time concerning this *Objection*.

This *maxim* must first be laid down, as an unquestionable Truth, viz. *y Contra omnem rectitudinem est, bonum commune ad privatum ordinare, seu totum ad partem.* *y Suar. de Reg. l. 1.*
tem

tem propter ipsam referre. Law-givers judge what is fit for the common good; and unreasonable it were to stoop that unto private interests and respects. Supposing then that some Laws may appear contrary to some particular mens Consciences; What shall be done? obey contrary to their judgements, or disobey those Laws for conscience sake?

2 Soto de Just.
 & Jur. l. 1. q.
 6. art. 46

For answer hereto, give me leave to say, first, That there is no contrariety betwixt a just Law, and a good Conscience. That Law is undoubtedly a just Law, in which there is a concurrence of the justice of these four causes of Law, wherein the whole of it doth consist; That is to say, the justice of the final, efficient, formal, and material causes of Law. 1. It must be for the common good. 2. The Law-maker must have a true legislative power. 3. The matter of the Law must be good, at least indifferent. And 4. lastly, It must have the right form of Law, i. e. it must be a rule of rectitude for humane actions. Such a Law doth necessarily oblige them to whom it is given; nor can it possibly be contrary to a good Conscience; because such a Law is conform to right reason, as right reason is conform to the Law of Nature; and the Law of Nature to that eternal Law in the minde of the Divine Essence.

Let me give an instance or two. This is the Law of Nature, and to this right reason is conform, viz. That men live temperately. This Principle considered by the Law-makers; they judge it fit to make a Law, prohibiting the eating some kinds of meats, as of flesh in the Spring or Lent, that thereby (amongst other reasons) Christians might shew their temperance; which is not onely an abstinence from excess in the Quantity of all; but, in regard of the Quality of some meats, as appears by Daniel's fast, in the 10. of that Prophecy,

phesy, *vers.* 3. Such a Law as this, cannot be *contrary* to a good conscience, because it is appointed for the practise of a *noble* Virtue, to wit, *Temperance*.

Again, as to the case in hand. This is a *rule* in the Law of Nature, That *such as are Governors of others, use all prudent means to prevent Sedition and Schism in the Church and State*. Now if *Law-givers* are *morally* assured, that *this* cannot be done, without *defining* some things under *dispute* amongst their *Subjects*, and exacting from all a *submission* unto *that* rule, which they shall prescribe by *Law*, and shall thereupon injoyn an *uniformity* of practice unto all the *community*, such a Law cannot be *contrary* to a good conscience; the reason is, because the *submission* thereunto is an *actual* exercise of the Virtues of *humility, obedience, charity and sobriety*. So, that unless to practise even *Cardinal* Virtues, be *contrary* to a good conscience, *There is no contrariety betwixt a just Law, and a good conscience*.

2. I answer *secondly*, That it is the opinion of many learned men both a *Divines* and *Canonists*, That he that *submits* unto a just Law, though *contrary* to his own judgment, is not thereby guilty of sin. The reason I conceive to be, because no man is guilty of sin, in *doing* of that, which God *expresly* commands him to *do*. Now it is Gods *expres* command, that *Subjects* obey their *lawful* Governors, not onely for *fear of wrath, i. e.* punishment, but likewise for *conscience sake, i. e.* that by their *obedience* they might avoid the guilt of sin, *Rom. 13.5.* which *obedience* of Magistrates, it is *impertinent* for any one to say he performs, that *refuseth* to obey the just Laws of such as God hath plac'd in *authority* over him.

Some (indeed) have thought, that there is a *middle* course to be taken in *this* case, and that *willingly* to submit to the *penalty* of the Law, is sufficient to dis-

E

charge

*a Halensis, Ant.
Henr. Carthus.
Vol. 9, &c.*

charge the conscience from all guilt of disobedience. The reason of this assertion is, because there is this rule in the Law [*Et si non potest infligi pœna sine causâ, potest tamen sine culpâ*] there may be no fault for which a punishment may be inflicted, but there must be some cause.

This I acknowledge to be the judgement of some excellent Divines; but withall, it is to be observed, that they confess it holds true, only in that sort of Laws which the Canonists term [*Leges purè pœnales*] Laws purely penal; but it extends not unto [*Leges mixtæ pœnales*] Laws of a mixt nature.

b Quoties per
verba legis pœ
nalis non decla
ratur sufficien
ter proprium
præceptum obli
gans ad actum,
vel omissionem
ejus, præsumen
dum est, esse le
gem purè pœna
lem. Suar. de
Leg. l. 5. c. 4.
d. 9.

But, as those Laws which are purely penal, are very few, as appears by that Character of them which b Suarez gives us; so are they not such Laws of which we now treat; for these are both moral and penal; and in this case, to undergo the punishment, doth not discharge the Conscience from the guilt of sin: the reason is, because there is a double obligation in every such Law; it binds either to do, or to omit some moral act; and it binds likewise to undergo the punishment, if that act be not done, or omitted, according to the appointment of Law. For it is a true rule, that *omnis præceptio obligat ad culpam*; every just command of our lawful Superior, leaves a guilt upon the conscience of him that refuseth to obey.

c De coron.
dist. c. 11.

Now this is an hard case you'll say. So hard indeed, that I solemnly profess, that it cannot sink into my understanding, that our merciful God ever intended, that men should be reduc'd into such horrible perplexities, as this case imports: for *nulla est necessitas delinquendi, quibus una est necessitas non delinquendi*, saith cTertullian; and the case may be such, that a man may not be able to suspend his action; and then, sin he must whether he do, or not do as he is commanded.

How.

However I shall not be *peremptory* and *Magisterial* in a point of such infinite importance (as by the *erroneous* doctrines and *imaginative* practises of men, the same is now become) *veris nitimur & verisimilibus non contradicimus*, as the great *Historian* speaks. Reliance I would have only on *Truth*; but things so *likely* to be true, as that *first* opinion is, I shall not *contradict*. If obedience unto Gods *command*, be a good *Warrant* against all; methinks it should be so, against *our selves*; and that upon these *two* or *three* considerations, which I shall humbly offer unto all *such* Christians, who, as *themselves* complain that they have *tender* consciences; so their *brethren* have not had cause given them to complain, that *they* have had *hard* hearts.

1. *First* I shall desire every *such* Christian to consider, whether it seems not *unreasonable* to affirm, That there is in the soul of man a *power*, invested with a *capacity* of binding the *Will*, from obedience of *just* Laws, because the *end* of all Government is hereby wholly *frustrated* and *taken away*; which is the preservation of *peace*, *virtue*, and *love* in the whole *community* (whether of *Church* or *State*) by an *uniform* obedience of the *same* Laws, from the *obligation* whereof, *conscience* is supposed to set *all* men *equally* free; and thereby to become the great *Palladium* of *Sedition*, *Heretic*, *Treason*, and what not; whereof I wish there were no *argument* to be summon'd against the *Gain-sayers*, from *fresh* experience of *these* evils.

2. *Secondly*, there must needs follow from *thence*, an *odium* not only upon all *such* Laws, as *such* men shall esteem *unjust* (how *just* soever they be) but also, upon the *very persons* of *Princes*, and of all *inferior* Magistrates, that shall put *such* Laws in execution. And what think you will become of that *Prince* (if *means* and *opportunity* should offer themselves) who shall be *esteemed*

a Persecutor of his People for conscience sake?

d In Prae'egom.
ad P. Soto.

3. Lastly, I shall leave it to the consideration of the learned, whether the opinion of *d Brentius*, viz. That the Magistrate hath power to bind the conscience in cases that concern Religion; and yet that his subjects must not submit thereto, without approbation of their own judgement; whether this opinion (I say) doth not interfere, and is of most dangerous consequence to the Peace and prosperity of Church and State; which yet is that same opinion, which hath taken (by what means I know not) too strong and deep rooting in the minds of many men, otherwise good and virtuous persons.

For conclusion of this point. Seeing therefore that 1. The Apostles themselves have defined matters in debate and controversy in the Church, for prevention of Schism; And 2. That National and General Councils have done the like, as conceiving themselves duly impowered and obliged thereto. 3. That it is necessary unto all Governments whatsoever, to be furnish'd with all means that may preserve them from certain ruin and destruction. 4. That things that concern humane Affairs, are not under the Gospel, in a condition inferior to that which they had under the Law. 5. That the revival of this Law is not contrary to Scripture, nor the Scripture an adequate rule for particular actions. And lastly, That liberty and conscience duly considered, receive no prejudice by this Law of defining points under debate, and thereby imposing an end unto controversies:

I conclude, That this Judicial Law (as to the directive part of it) may be revived by Supreme Authority; and in the

III.

Third and last place, I humbly conceive it to be of force in this Government, as a fundamental thereof; and that for these two or three reasons, which I shall mention in a word, and so disburden your patience.

1. First,

1. *First*, because the *state* of *this* Church and Commonwealth ought *no* more to *want* any of those means, which are *necessary* to her *preservation*, than any other Church or Commonwealth in the world; and therefore God having *declared*, that a *power* of *defining* matters in debate, was *necessary* to the *being* and *flourishing* of his *own* Church, and Kingdom amongst the *Jews*; the Government of *this* Church and State, cannot be *reasonably* thought to be *divested* of *that* power.

2. *Secondly*, because the *Crown* of this Realm is an *Imperial Crown*; the same which *Vulcatius Gallianus* calls *Imperium justum*; which implies, that *as* it is *independent* from any other but God alone; *So* it cannot be conceived to *want* any thing that belongs to an *absolute* and *independent* Government; and therefore is *inseparable* from *such* a power we speak of; there being *inherent* in *this* Crown, not onely a *temporal*, but an *Ecclesiastical* Dominion, such as *our* Church affirms to have been in the *Kings* of *Judah*; and which was likewise in the *Roman Emperors*, as appears by that title of *Pontifex Maximus* derived unto them, together with the *Empire*; and which was retain'd by *Constantine* and his *successors*, untill *Gratian's* time, who first of all *devested* the *Imperial Crown* of that title, and thereby *opened* a way for *Maximus* to bereave him of his life. Let *Princes* think on that *bloody* but *witty* conceit of *Symmachus* (the *Heathen Prator* of *Rome*) and then consider, what it is to part with *Ecclesiastical* Dominion [*Si Gratianus nolit esse Pontifex Maximus, brevis erit Maximus Pontifex.*]

3. My *third* and *last* reason is founded in *equity*; because the *subjects* of this Realm have not onely an *interest* in *making* those *Laws* whereby they are *govern'd*, but likewise a *right* to *interpret* those *Laws* when made; if becoming *doubtful*, by reason of some

e See Cal. ubar.
not. in Vulr.
Gill. n. 10. p.
199.

f A. 1. 37.

g Z. sim. l. 4.

h Baron. ad an.
Christ. 383.

i 1. Prefat. ad
lib. 4.

ambiguous clauses, or expressions therein: For although interpretatio Legum ordinariè Reverendos Judices Regniq; sapientes spectat, &c. (as saith Judge i Cook) though the expounding of the Laws doth ordinarily belong to the Reverend Judges and Sages of this Realm, yet in case of greatest difficulty and importance, to the high Court of Parliament. In which Court of Parliament, the people of this Nation having their Representatives, it must follow; that Equity will oblige them to stand to their own Act; as being done in that Great Council, wherein are both the Priest and the Judge; and from which lies no Appeal. A doctrine (surely) which now deserves a better regard, than when it was (for many years together) the *Palpit-aphorism* of three Nations.

I shall conclude with a special direction of a few words to all, as their Places, Callings and Opinions, may be duly thought to concern them, in the design of this Discourse; which the Searcher of all hearts knows, to be the product of that sincere love, which I have unto all my Christian Brethren, and unto the peace and welfare of that Church and State in which we live.

And the words shall not be mine, but they shall be the words of the wise, which (I trust) will be as goads, and as nails fastned by the Masters of assemblies.

Eccl. 12. 11.

1. And first for such as are Dissenters from this point; I shall leave upon their thoughts that milde and pious exhortation of the judicious Hooker, in his Preface to his unanswerable Treatise of Ecclesiastical Policy.

The best and safest way for you my dear Brethren (says he) is, to re-examine the cause you have taken in hand, and to try it every point by point, argument by argument, with all the diligent exactness you can, to lay aside all gall of bitterness, and with meekness to search the truth. Think you are men, deem it not impossible for you to err: sift impartially your own hearts, whether it be force of reason,

reason, which hath bred and still doth feed these opinions in you. If truth doth any where appear, seek not to smother it by glosing delusions, acknowledge the greatness thereof, and think it the best victory when it doth prevail over you. Far more comfort it were for us (so small is the comfort we take in these strifes) to labor under the same yoke, as men that look for the same eternal reward of their Labors; to be joyned with you in indissoluble bonds of love and amity. To live as if our persons being many, our souls were but one; rather than in such dismembered sort, to spend our few and wretched days, in a tedious prosecution of wearisome contentions, the end whercof (if they have not some speedy end) will be heavy on both sides. Experience hath made the Prophecy observable:

2. For these honorable Gentlemen whose concernment in Church and State are now allyed, and twisted by his Majesties favor, unto one and the same common end, to be procur'd and advanc'd by the same common trust of power; of which I may say as Alexander in *k* *Cur-* L. 10.
tius did of his marriage with Darius his Daughter; that it was done by him, *ut hoc sacro fœdere omne discrimen victi & victoris excluderet*; I shall only minde you of that advise the late Wise and Pious *l* King gave ELK. BAS, p. 238.
 unto his Son, his Majesty that now reigns. Let nothing seem little or despicable to you in matters which concern Religion and the Churches Peace, so as to neglect a speedy reforming and effual suppression of Error and Schisms; which seem at first but an hand-breadth, by Seditious Spirits, as by strong winds, are soon made to cover, and darken the whole Heaven. I press you not to extremities: God forbid! Neither prudence nor Charity allow such courses; the State of this Church resembles that in St. Austin's time; and therefore we may all say as *he* did; *Non* m Lib. cont. Do-
tamen ideo Ecclesiam negligimus; sed toleramus quæ ual. c. 20.
nolumus, ut perveniamus quo volumus.

To

n 1b in Prefat.
A Prince ought
not to suffer
his Laws to
become a
laughing-
stock; And wo-
ful experience
hath often
taught (which
I my self have
sometimes ob-
served) that
many of those
men that have

To you (my Lords the Judges) I shall conclude, with an humble desire that your Lordships will be pleased to reflect upon a few words of the Oracle of the Law; I shall give you them in his own language out of that excellent Preface, to the fourth Book of his Reports. *Non debet Princeps ferre suarum legum ludibrium. Quin & sapius docuit misera & luctuosa experientia (quod aliquando ipse etiam observavi) multos qui in id, ingenii nervos omnes intendunt, linguasque exacuunt, ut legibus hisce scandalum aut calumniam imponderent, nefarium aliquod crimen aut commisisse, aut fuisse machinatos, ideoque leges odisse, quia justam censuram, & gravem plagam metuerunt.* My Lords, * You know the man and his communication,

stained their wits, and stretched their tongues to scandalize or calumniate these Laws, had either practised or plotted some heinous crimes; and therefore hated because they feared the just sentence and heavy stroke. * 2 Kjn. 9. 11.

o Exod. 21. 29.

Let me add but a word more. Amongst the Jews God made o this Law, That, If an Ox were wont to push with his horn in time past, and it hath been certified to his owner, and he hath not kept him in, and he hath kill'd a man or woman; the Ox shall be ston'd, and the owner also shall be put to death. The words (my Lords) have a tropological sense; tis obvious, and I shall leave it to your Lordships wisdom to apply it.

And lastly (that I may knit both ends of my discourse together) I shall conclude to, and for all, in the words of Holy David, Psalm, 19. Lord keep thy servants from presumptuous sins, lest they get the Dominion over us, so shall we be undefil'd, and innocent from the great offence.

T H E E N D.